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PROGRAM MEMO (PM)

TO: **AREA AGENCIES ON AGING DIRECTORS**	NO.: **PM 03 - 24**
SUBJECT: **OAA and OCA Data Reporting and the Health Insurance Portability and Accountability Act (HIPAA)**	DATE ISSUED: **December 17, 2003**
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REFERENCES: www.ohi.ca.gov	SUPERSEDES: N/A
PROGRAMS AFFECTED: [ ] All [**X**]Title III-B [**X**] Title III-C1/C2 [**X**] Title III-D [**X**] Title V [**X**] CBSP [ ] MSSP [**X**] Title VII [ ] ADHC [ ] Other:_____	
REASON FOR PROGRAM MEMO: [**X**] Change in Law or Regulation [ ] Response to Inquiry [ ] Other Specify:_____	
INQUIRIES SHOULD BE DIRECTED TO: **Your Assigned AAA-Based Team, or Wayne R. Lindley at (916) 323-0581.**	

This Program Memo (PM) is to provide Area Agencies on Aging (AAA) guidance and information concerning the effect of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule on Older Americans Act (OAA) and Older Californians Act (OCA) program data reporting.[1] We caution that this guidance should not be interpreted as legal advice to either AAAs or AAA subcontractors. Further, AAAs are fully responsible to know and apply applicable laws and regulations and to meet the terms and conditions of State contracts. This guidance should not substitute for your own knowledge about what is covered by HIPAA, especially if you subcontract with HIPAA covered entities. If you have legal questions regarding the implications of HIPAA and the Privacy Rule on your OAA and OCA responsibilities and obligations, we urge you to consult with your legal counsel.

Background

HIPAA, also known as the Kassebaum-Kennedy bill, became federal law on August 21, 1996.[2] HIPAA is intended to: (1) improve the portability and continuity of health insurance coverage in group

[1] This Program Memo does not address MSSP and ADHC Programs. MSSP and ADHC are covered entities under HIPPA. CDA issues separate instructions regarding HIPAA for the LTC Ombudsman Program, MSSP, and ADHC.
[2] P.L. 104-191. For more information on HIPAA, turn to www.ohi.ca.gov.

and individual health insurance markets; (2) combat waste, fraud, and abuse in health insurance and health care delivery; (3) improve access to health services and coverage; and (4) simplify the administration of health insurance. HIPAA includes "Administrative Simplification" (AS) requirements intended to improve the efficiency and effectiveness of the entire health care system through national standardization of electronic claims transactions. Within the AS, a Privacy Rule establishes requirements for the handling of certain health care information to ensure privacy of patient health care data and records.

Federal HIPAA privacy regulations were effective starting April 14, 2003. The HIPAA Privacy Rule applies only to "covered entities," which are defined as health plans, health care clearinghouses, and health care providers who conduct certain financial and administrative transactions electronically. A health care provider is a provider of medical or health services, and any other person who, or organization that, furnishes, bills, or is paid for health care in the normal course of business (45 CFR 160.103). Health care is defined in the Privacy Rule to include " . . . preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care and counseling, service assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body."

AAAs have master contracts with the California Department of Aging (CDA) for the delivery of federal OAA Title III/VII services, Title V Senior Community Service Employment Program services, and several OCA Community-Based Services Programs (CBSP).[3] In recent months, AAAs have been informed by some OAA or OCA providers that they will not report individually identifiable client data for OAA and OCA programs unless a release form is signed by each client served. The ensuing confusion over the impact of HIPAA on OAA and OCA programs has threatened to interfere with the ability of AAAs to report Title III and CBSP data to the State in a timely manner, as required in the master contracts and by the federal National Aging Programs Information System (NAPIS). While Title III data submitted from AAAs to the State are aggregated data, it is based upon uniquely identifiable client-specific data at the local level to ensure that clients served are unduplicated clients. Federal NAPIS rules require that certain Title III services "register" clients. Registration means clients will be uniquely identified (such as a Social Security Number) to prevent duplicating client counts in NAPIS reporting. The AAA may therefore require their subcontractors to submit uniquely identifiable client-specific data when reporting to ensure they meet this federal standard, as well as track unduplicated CBSP clients.

Guidance on the Effect of HIPAA on Federal OAA Data Reporting

In conjunction with the Administration on Aging (AoA), the Office of Civil Rights (OCR) (which has authority for HIPAA enforcement) has provided CDA with an assessment of the impact of HIPAA on OAA programs as follows:

> "It is our (OCR) understanding that: The purpose of the OAA is to provide supportive services necessary to enable senior citizens to age with dignity. All of the programs authorized by the OAA . . . are intended to promote the independence of senior

[3] Title III/VII Standard Agreement Terms and Conditions, Exhibit A and Exhibit E.

> citizens thus delaying the need for institutional care for as long as is practical and safe."
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> "Most of the OAA programs offered by AAAs and State agencies are social in nature (congregate and home-delivered meals, homemaker assistance, respite/caregiver relief for adult caregivers, etc.). A few of the services are health-related (e.g., home health aides may provide health services). These health services reportedly represent a small percentage of the time and dollars spent providing services to eligible seniors."
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> "The HIPAA Administrative Simplification rules, including the Privacy Rule, apply only to those health care providers who engage in any of the standard HIPAA administrative and financial health care transactions electronically (such as claims, health care payment and remittance advice, . . .)."

Based on the information provided by OCR, CDA has determined that client authorization is not generally required for OAA programs and services. The HIPAA Privacy Rule does not affect the majority of AAAs' service providers because these providers do not provide medical or health services, nor do they bill electronically by individual claims.

With respect to Title III case management services (often considered a health care service), a provider could be subject to the Privacy Rule, but only if it were to bill electronic claims for individual clients. Even then, it is questionable whether client authorization for release of records for the purposes of compliance with the federal registration requirements would be absolutely necessary, because the AAA would most likely be considered a "health oversight agency" for the purposes of HIPAA. A health oversight agency is an agency that is authorized by law to oversee the health care system (whether private or public) or government programs in which health information is necessary to determine eligibility or compliance issues. Federal regulations permit covered entities to release individually identifiable health information to health oversight agencies without the authorization of the client to the extent permitted by law. If your reimbursement system is filed by individual claims, we suggest that you consult with your HIPAA Privacy Officer and/or legal counsel to determine your possible status as a health oversight agency. Again, the key factor to determine applicability of HIPAA to health care providers is electronic health claims processing, not the provision of health services. CDA is not aware of any OAA programs being paid for through individually identifiable electronic claims payment.

Guidance on the Effect of HIPAA on Linkages and State OCA Data Reporting

As with OAA Title III services, it is highly unlikely that OCA CBSP data reporting will be affected by HIPAA, with one notable exception for Linkages Programs that are currently billing for Medi-Cal Targeted Case Management (TCM) to the California Department of Health Services through their Local Government Authority (LGA). As Linkages client level data is transmitted electronically for the purpose of reimbursement via claims, it is essential that each participating Linkages Program contact their LGA for specific HIPAA compliance requirements.

With respect to the remaining OCA CBSP services, the key factor is electronic health claims processing, not just the transmission of uniquely identified health or other social services data. We are not aware of any OCA programs being paid for through individually identifiable electronic claims payment.

Guidance Concerning Data Reporting from Hybrid Providers[4]

There may be times when AAAs work with hybrid providers where part of the service provider organization is a covered entity under HIPAA. The subcontractor may use an integrated database for both healthcare services and generalized social support services. Clients may flow back and forth between needed healthcare management (covered services) and social services (not covered), depending on the clients' ever-changing health and functional needs. This database contains identifiable client information and may also contain uniquely identifiable health related information. This may be considered protected health information under HIPAA Privacy Rules.

In this situation, the subcontractor still has a contractual obligation to the AAA to report individual Title III client data in order for the Area Agency to maintain the required unduplicated counts for NAPIS reporting. The AAAs use these data for payment for services (but not by individual claims), business planning, management, and for submitting to the State de-identified information in a limited dataset (aggregated, but unduplicated data). These activities are considered routine "health care operations" under the HIPAA Privacy Rules.

Recommendations

Since we believe HIPAA privacy provisions generally do not apply to OAA and OCA programs, it appears that a provider's requirement for written client release of data to the AAA is not only unnecessary, but could act as a barrier to service provision. We recommend that you discuss your concerns with the provider to ensure that it is able to continue to provide the necessary services to clients and the contractually required data to your agency.

Our practical "rule of thumb" is that unless the AAA is requiring the transmission of individually identifiable health data within a claims payment structure, it is not covered by HIPAA rules. We strongly suggest to any OAA or OCA programs being paid in such a manner change the method to avoid this very problem. If for any reason you have to use a claims method, you may be a health oversight agency, which means you still do not have to have client consent releases.

[4] Service providers that have only a part of their organization covered by HIPAA Privacy Rule.

Recommended Actions

- Make sure your sub-contracts with providers include clearly written provisions that specifically define the use of the collected client information.

- Include contract provisions for protecting this information, while still allowing the data to flow freely between the provider and the AAA, and therefore to the State, for the purposes of federal OAA reporting under NAPIS and State OCA CBSP reporting procedures.

AAAs contracting with hybrid providers that collect data covered by HIPAA, as well as data not covered by HIPAA, may need to work with those providers in developing software systems with access controls, and possibly firewalls. This can be accomplished with a separate database table for unique client registry (name, address, phone number, Social Security Number, etc.) and separate tables containing the sensitive protected health information. Reports can then be generated with or without the sensitive health information covered under HIPAA.

We hope these suggestions will help you streamline the Title III reporting under NAPIS and meet your commitments under the master Title III/VII and CBSP contracts. This information should be helpful to you in resolving your data reporting concerns. The intent of HIPAA is not to impede the normal course of business, especially in the oversight functions of agencies. Again, we caution that CDA's views should not be interpreted as legal advice. If you need legal interpretation of HIPAA requirements, we suggest that you consult with your legal counsel.

Original signed by Lora Connolly for

Lynda Terry
Director